

# THE **Workplace Relations** ACT

## **Modernising Australia's industrial relations**



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Since gaining office a year ago, the Australian Government has concentrated on restoring a strong, growing and competitive economy.

An essential step towards improving economic performance and employment growth has been the overhaul of Australia's industrial relations system.

The new workplace relations law modernises Australia's industrial relations system and is an important element in achieving the Australian Government's wider economic strategy.

The new law emphasises stability, reliability and respect for workplace agreements.



## Flexibility and productivity

The changes made by the new law put responsibility for wages and conditions and work practices where they belong - in the hands of employers and their employees in individual enterprises and workplaces.

A more flexible labour market will result. Businesses – and their workplaces – are now freer to develop their own approach suited to their own needs, to such issues as working hours, use of capital and work organisation.

The new law has operated since the start of 1997.

These and other initiatives which the Australian Government is taking will result in higher productivity and better opportunities for investment.

## Transforming the industrial climate

The Australian Government recognises that business planning, innovation and international competitiveness depend on good industrial relations. Real flexibility in operating a business, reduction of regulation and more direct relationships between employees and employers will benefit individual enterprises and the overall economy.

Australia's previous industrial relations system emphasised the settlement of disputes by third parties. It relied more on tribunals, unions - often in a monopoly position - and employer associations, than on encouraging employers and employees to reach responsible outcomes based on the circumstances of their particular enterprise or organisation.

The landmark Workplace Relations Act (the Act), at the federal level of government, provides a new basis for boosting the productivity of enterprises operating in Australia. Its focus is on individual enterprises or workplaces, where decisions can be made to apply more flexible labour practices.

It gives certainty for businesses. Previously, there were more possibilities of disruption through the intervention of an industrial tribunal or unpredictable industrial action.

## The new workplace relations law

Five principles govern Australia's new workplace relations, and are reflected throughout the Workplace Relations Act 1996. These are:

- A more direct relationship between employers and employees - with the emphasis on making agreements and a reduced role for third parties like the Australian Industrial Relations Commission or unions, without the support of employees.
- A more balanced system, fair to employers and employees, particularly in relation to termination of employment and compliance.
- Genuine freedom of association - with a guaranteed choice now as to whether or not to join a union or employer association and a greater choice for employees and employers of who may represent their industrial interests.
- A more accessible system - with arrangements that are simpler for all, without the heavy burden of too much regulation, and greater choices for individual employers and employees about which kinds of agreements best suit them.
- Clearer rights and responsibilities for parties in the industrial relations system.

## Confidence already building

There are early signs that the new Act is transforming Australia's workplace relations.

The first came when the OECD's 1996 Country Review on Australia, released in December 1996, said the new industrial relations system would be considerably more favourable to enterprise-level bargaining and might be more successful in achieving the aggregate real wage flexibility required to achieve lower unemployment.

A second clear signal of confidence was the commitment made by State governments in 1996 to work with the Federal Government to harmonise federal and State industrial relations systems, in order to provide much simpler ways for businesses to operate nationally. The historic decision of the Victorian State Government to refer its industrial relations powers to the Federal Government, from 1 January 1997 represents a major advance in this area.

A third practical development is that several businesses have already successfully halted unlawful industrial action using the new law's strengthened compliance provisions.

Fourth, there is strong interest in developing the new form of individual employment agreements now available to employers and their employees.

And finally, the new law about the unfair dismissal of employees is fairer to both employers and employees. This law is stopping undeserving claims being brought against employers and gives business more confidence in employing staff.

## Agreement- making in enterprises and workplaces

- Agreements at the enterprise and workplace level will now be the main way wages and conditions are settled.
- This will allow employers and employees to reach mutually beneficial agreements about productivity, wages and conditions that best suit their needs.
- These agreements can replace awards. They must be tested to ensure the agreement does not result in employees being worse off overall compared with their legal entitlements under awards and certain other employment laws. This means that employers and employees can make genuinely innovative agreements without artificial restrictions. Collective agreements must be supported by a majority of the employees who will be covered by them.
- Employers and employees now have a **genuine choice** over the agreements they can make. They may make formal agreements under the Act or continue with informal arrangements.
- If they decide on formal agreements under the Act, employers and employees may make individual or workplace-wide agreements **with or without unions**, as they prefer. Union members can be represented by their unions. An employer may also make an agreement with a union, but it can only operate if a majority of employees support it.
- For the first time at the federal level, formal individual agreements, known as Australian Workplace Agreements, can be made under the Act **directly** between employers and employees. A new public official, the Employment Advocate, will provide a simple, easy way for these agreements to be approved and will assist employers and employees with the process.
- A new business, before it hires any employees, can make an agreement with a single union that will provide the business with stable employment arrangements for up to three years. Subsequent agreements must be approved by a majority of the employees who are subject to the agreement.

## Modernising federal industrial awards

- The new law changes industrial awards made by the national industrial tribunal. From now, awards are to provide minimum standards to protect employees (especially the low paid), with the actual terms and conditions of most employees determined by agreements at enterprises or workplaces.

*Industrial awards are legally enforceable documents setting out the minimum wages and conditions of employees - they usually apply to more than one enterprise or workplace in an industry or sector. Often they do not meet the needs of individual workplaces; many currently set out almost all employment conditions; and many are often expressed in complex language, making them difficult to understand and apply.*

- Australia's federal industrial award system has made the flexible use of labour difficult (for example, using regular part-time work), and slowed the development of modern business practices by creating labour market rigidity.
- Awards will now be simplified and made more flexible. They can only deal with certain basic matters covering specific employment conditions (for example, pay, leave, notice of termination of employment).

- Because awards will be simplified and made more flexible, there will be greater scope for employers and employees to change how work is organised, without such matters being dictated to them by their award.
- These changes are taking effect immediately. Employers and unions who are subject to existing awards have a final deadline of 1 July 1998, after which any provisions in awards outside the specified matters will no longer apply.

## Freedom of association and the conduct of industrial organisations

- Reform in this area of industrial behaviour is fundamental to the effectiveness of the new law.
- Union membership in Australia has reached its lowest level in decades, at only 24 per cent in the private sector. The new law recognises there is a place for responsible unionism, but does not allow an unfair, special position or monopoly rights to continue. In practical terms, this means
  - compulsory unionism is abolished, with membership of all organisations to be truly voluntary
  - provisions in federal awards which required an employer to give preferential treatment to union members are abolished
  - 'closed shops' are no longer allowed (in some industries the bargaining strength of unions allowed them to establish arrangements where all employees had to belong to a union)
  - discrimination against individuals or victimisation of individuals because of their membership or non-membership of a union is prohibited.
- The new Employment Advocate can investigate violations of the freedom of association provisions of the law.
- The new law also provides employees with more effective choice of representation.
- The previous system made it difficult for workers to establish new unions. This meant that existing unions did not have to be competitive or improve their services to their members. There is now greater choice and accountability for unions in the federal system - it is easier to register new unions and create enterprise unions.
- There are strong safeguards in the new laws to protect against costly demarcation disputes between unions that may impede business operations.
- There is a strictly defined right of entry onto work premises for union officials, and entry must be by permit from an independent public official (an Industrial Registrar).

# Industrial relations



## Compliance

The new law ensures appropriate standards of industrial conduct are observed and that industrial agreements are honoured.

- The right to take industrial action is recognised in particular circumstances, consistent with the generally accepted principles of collective bargaining. Employees have a specific and limited right to strike during the negotiation of agreements. Employers have a similar right to lock out employees. Industrial action is prohibited during the period of operation of an agreement. It is unlawful to claim pay for periods when workers are on strike, or to make such payments.

- The Australian Industrial Relations Commission has greater powers to direct that industrial action stop or not occur. This provision has already been used to good effect by several Australian companies. Disputes between unions over which union can cover work can be decided by the Commission, which can stop industrial action in such cases.
- There are tough new penalties for breaches of obligations under awards or agreements and speedier access to the courts to deal with any industrial action.
- Union boycotts affecting overseas trade involving the movement of goods are prohibited - and there are heavy penalties for such action.
- Secondary boycotts which can cause substantial damage to the business of an enterprise are also prohibited - again, heavy penalties apply.

## Unfair dismissal

- The Government has replaced the previous unfair dismissal system - which discouraged new employment - with a fairer and much simpler system.
- The new system will be less legalistic and discourage improper claims. The economic impact on an employer's business will be one of the factors taken into account in decisions on claims.

## Effective institutions

- The Australian Industrial Relations Commission's role is still important but different as employers and employees will increasingly handle their own industrial relations and agreement-making. The Commission will establish simpler awards to provide fair minimum protection for employees.
- The Commission will encourage the making of collective agreements, either union or non-union, and continue to resolve industrial disputes, including by arbitration, within specified limits. The Commission will handle various matters relating to registered unions and employer bodies.
- The new Employment Advocate is to provide advice and assistance to employers and employees about their rights and obligations under the new law, with particular emphasis on Australian Workplace Agreements and freedom of association matters.

## What to expect from the new law

- Businesses will have greater control of their own work practices and wages outcomes: There is greater scope for productivity gains and fundamental workplace reform in enterprises and workplaces. The Government expects that low inflation and inflationary expectations, and the concentration on productivity at the workplace level, will combine to offer greater opportunities for business planning and growth.
- An industrial climate of greater certainty and reliability: Stronger compliance, a better system for dealing with claims of unfair dismissal, simplified flexible awards, better agreement-making processes, with reduced union involvement, and the abolition of compulsory unionism will reduce the burden of regulation on business in Australia and create a more stable industrial environment.
- Responsible unionism: For those who choose to join a union, the new law will make unions and their officials more accountable to their members and provide a better service. The Government supports voluntary unionism, and has legislated to ensure that inappropriate industrial action, uninvited union intervention in agreement-making, or the placing of unions in a privileged or monopoly situation will be removed as factors in Australia's industrial relations
- Better performing industry sectors: The Government is working closely with important industry sectors to use the new law productively to achieve workplace reform. This includes the waterfront and maritime industries, meat processing, building and construction and coal. The Government is also advancing reform in its own sector to improve performance, increase competitiveness and enhance leadership in the Australian Public Service.
- More efficient and integrated national industrial relations arrangements: The Federal Government is working with State governments to harmonise and simplify industrial relations arrangements in Australia. As these initiatives take effect, they will make it easier for business to operate and encourage investment.

## Looking ahead

The Workplace Relations Act helps employers and employees. They must now take up the opportunities it provides for improved labour market flexibility within enterprises or workplaces, so that they can share the benefits of productivity growth.

The Australian Government will be working with employers and employees to achieve this. It is changing Australia's future industrial relations as part of an active agenda of reform designed to build a vigorous, competitive economy.